

**CONTRACT FOR THE PERFORMANCE OF
INDEPENDENT ASSESSMENT ACTIVITIES
FOR THE
WISCONSIN FAMILY CARE PROGRAM**

**between
THE WISCONSIN DEPARTMENT OF
HEALTH AND FAMILY SERVICES (DHFS)
and
INNOVATIVE RESOURCE GROUP, LLCSM**

September 2002 – September 2003

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CONTRACT

THIS AGREEMENT is made and entered into this 16th day of September 2002 by and between the State of Wisconsin, Department of Health and Family Services, hereinafter referred to as “the Department”, and Innovative Resource Group, LLC, (IRG), whose principle address is 300 Executive Drive, Brookfield, WI 53005, hereinafter referred to as “Contractor”.

WHEREAS the Department wishes to contract with Contractor in order to engage the professional services of the contractor for the period commencing September 16, 2002 and ending September 30, 2003; with options to extend or renew as described in Section XI of this contract, and

WHEREAS Contractor has indicated a willingness to provide said professional services to the Department;

NOW THEREFORE, in consideration of the mutual and independent agreement and consideration of the parties, the Department and Contractor, the parties hereby covenant and agree as follows:

I. DEFINITIONS

“Benefit package” means Family Care covered services, which shall be furnished by the CMO and for which payment is included in the capitation rate. A complete list of services in the Family Care benefit package can be found in the 2002 Health and Community Supports contract between the CMO and the Department, which is available on the Family Care web site. Additional information about the Medicaid services included in the FAMILY CARE benefit package can be found on the Medicaid program web site (www.DHFS.state.wi.us/medicaid) and in Medicaid contractor updates.

“Capitation” means a per-member, per-month payment to a CMO for enrollees’ services that the CMO is required to provide or purchase as described in the Health and Community Services Contract and is paid in advance of their delivery.

“Care Management Organization” (CMO) means an organization that manages, coordinates, and assumes financial risk for the delivery of the Family Care benefit to enrolled members in a given geographic area.

“Centers for Medicare and Medicaid Services” (CMS) is the agency within the U.S. Department of Health and Human Services that administers the Medicare and Medicaid programs.

“Clinical” describes a practice specialty of the health and long-term care profession, including but not limited to registered nurses and social workers, which encompasses theories of biological, psychological, and social development, and includes client-centered clinical supervision and consultation with professional colleagues. Clinical practice is the application of specific knowledge, theories, and methods to assessment and diagnosis, treatment planning, intervention, and outcome evaluation.

“Continuous quality improvement” (CQI) means a process for improving quality which assumes that opportunities for improvement are unlimited, is customer-oriented, is data-driven, results in implementation of improvement, requires continual measurement of implemented improvement, and results in modification of improvements as indicated.

“Contract administrator” means the individual selected by the Department to manage all aspects of the contract.

“Contract period” means the twelve-month period commencing with the effective date of the contract.

“Contractor” means the primary vendor(s) awarded funds.

“Cost-reimbursement contract” provides for the payment of a fixed fee to the contractor. The fixed fee, once negotiated, does not vary with the actual cost but may be adjusted as a result of any subsequent changes in the scope of work or services to be performed under the contract.

“Cultural competence” means the ability to provide services effectively to people of all cultures, races, ethnic backgrounds and religions in a manner that respects the worth of the individual and protects and preserves their dignity.

“Days” unless otherwise specified in the contract, means business days.

“Department” or “DHFS” means the Wisconsin Department of Health and Family Services. This is the executive department in Wisconsin responsible for the administration of Title XIX (Medicaid). The term may also indicate the Department’s designee, as applicable.

“Enrollee” means an eligible individual who has been enrolled in a CMO. See definition of “member” below.

“Enrollment consultant” is any individual under contract with the Department to do enrollment consulting, which means that the enrollment consultant speaks with individuals who are eligible for the Family Care benefit to assist them in understanding all of the service or program options related to long-term care, and the costs and consequences of receiving services for their long-term care needs, including the option of enrolling in a CMO in order to receive the Family Care benefit.

“External quality review”(EQR) means the analysis and evaluation, by an EQRO, of aggregated information on timeliness, access, and quality of health and long-term care services furnished to Medicaid enrollees by each RC, Enrollment Consultant, or CMO, and other related activities performed by an EQRO.

“External quality review organization” (EQRO) means an organization that meets the competence and independence requirements set forth in Federal regulations and performs EQR. For the 2002-2003 fiscal year, this organization is MetaStar, Inc.

“Family Care” means the Wisconsin long-term care program which involves the Department’s contracts with RCs, enrollment consultants, and CMOs to provide LTC services to CMO members or potential CMO members.

“Family Care agency” means a resource center, care management organization, or agency employing enrollment consultants that has contracted with the Department to provide services related to Family Care.

“Independence” means external to and independent of the Department and not having a direct or indirect relationship (e.g., financial) with any program managed-care entities (e.g., CMOs).

“Independent assessment” means the analysis of information relating to the Family Care program and state management of that program, leading to a written report concluding whether quality, access, and cost-effectiveness are better than, equal to, or worse than before the program, identifying program strengths, and suggesting improvements.

“Member” means an eligible individual who has been enrolled in a CMO. See definition of enrollee above.

“Quality,” as it pertains to health and long-term care, means the degree to which a RC or CMO maintains or improves the health and long-term care outcomes of its enrollees through its structural and operational characteristics and through the provision of services. This definition recognizes structure, process, and outcomes as the variables that affect and constitute the delivery of appropriate health and long-term care and that have historically been used in the review of quality of care. “Quality” as it pertains to consumers, means the achievement of consumer-defined outcomes.

“Resource Center” is an Aging and Disability Resource Center, which is an entity that meets the standards for operation and is under contract with the Department to provide the following services under s.46.283 (3), Stats.: information and referral services, advocacy, long-term care options counseling, benefits counseling, transitional services, prevention and early intervention, emergency response, choice counseling, disenrollment counseling, and waiting list management.

“State” means State of Wisconsin.

“State Fiscal year” (SFY) means state fiscal year, July 1-June 30.

“Subcontract” means a written agreement between a Contractor and a third party, or between a subcontractor and another subcontractor, to provide services or perform administrative functions.

“Subcontractor” means a third party who contracts with a Contractor for the provision of services for which the Contractor has contracted with the Department to perform.

II. PURPOSE OF THE INDEPENDENT ASSESSMENT

The Governor, Legislature, and Department of Health and Family Services, working together with consumers, advocates, local governments, and providers, created the Family Care program in order to discover more cost-effective methods of organizing, delivering, and funding long-term care of high quality for individuals with the frailties of aging, developmental disabilities, or physical disabilities.

The purpose of the independent assessment is objectively to discover and document the extent to which Family Care has affected access to, quality of, and cost-effectiveness of long-term care services in the counties in which it operates, and the affect that Family

Care has on the State's Medicaid spending. To the extent that access, quality, or cost-effectiveness are better than, equal to, or worse than before Family Care was implemented, the independent assessment is to explain why, in order to advance understanding of long-term care systems and to enable correction of shortcomings and replication of successes.

III. SCOPE OF WORK

A. Independent Assessment deliverables

The first deliverable will be a workplan for the entire project, developed in collaboration with and approved by department staff, to be completed within sixty days of the commencement of this contract. This workplan will:

- Identify major analyses to be performed during the assessment, describing the question/hypothesis for each;
- Describe the design and sources of data for each analysis;
- Identify interim deliverables;
- Establish a timeline for completion of each deliverable; and
- Be adopted as an addendum to this contract.

The primary deliverable will be one report, due on or before September 30, 2003, for submission with the application for renewal of the Family Care waivers. This report should fulfill federal requirements,¹ insofar as these requirements relate to managed long-term care waivers.

This report will address program-wide access, quality, and cost-effectiveness, and will also separately address Family Care in Milwaukee County and in the remainder of the program, to meet federal requirements for each Family Care waiver.

To avoid duplication of effort, the report will rely on information collected by the Department and by the EQRO, and the report will address at least these questions:

- 1) Access—Can people get access to the services they want/need?
 - a) Marketing, Outreach, and Screening: Is information about the availability of long-term care options, including Family Care and options counseling, effectively reaching those who need to know about their options?
 - b) Entry into the Program: How has Family Care affected access to MA-funded long-term care services, for those who are eligible? In particular, how does Family Care enrollment differ from traditional waiver enrollment – target group, diagnoses, residence, age, other characteristics?
 - c) Services within the Program: Once in the program, can individuals get the services that they want and need?
 - d) Patterns of service: How do packages of services delivered to Family Care members differ from those to delivered to individuals participating in fee-for-

¹ These requirements are described in *Section 1915(b) Waiver Program Independent Assessments: Guidance to States*, December 1998, which can be found at <http://www.cms.hhs.gov/states/letters/smd1222a.pdf>.

- service long-term care, including the traditional waivers? Specifically, how has Family Care affected nursing home utilization?
- e) Exit from the Program Specifically, are there any circumstances under which members feel compelled to leave Family Care?
 - f) Review and comment on CDS and EQRO monitoring of access.
- 2) Quality—Are the services effective? Do they work?
- a) Member Outcomes: Do Family Care Members achieve their personal outcomes and do they get support for those outcomes?
 - b) How do Family Care's member-outcome results, by target group, compare to traditional waiver programs and any other available benchmarks?
 - c) Review and comment on CDS/EQRO monitoring of QA/QI. The IA should describe and assess the State's process for monitoring the program.
 - d) Members' health and functioning: Are Family Care members maintaining their level of functioning and staying as healthy as possible?
- 3) Cost Effectiveness — Does the program restrain costs? Do we get value for the dollar?
- a) Individuals' costs: Does Family care restrain Medicaid costs for those individuals who enroll?
 - b) Validate the Family Care upper payment limit assumptions and methodology.
 - c) Validate the Family Care rate-setting assumptions and methodology.
 - d) Aggregate Medicaid Costs: Does Family Care serve to restrain aggregate Medicaid costs for elderly individuals with long-term care needs and for individuals with physical or developmental disabilities?
 - e) Analyze and comment upon source of cost savings.
 - f) Considering both costs and results, does Family Care do a better job of providing cost-effective long-term care than do the traditional waiver programs, or the PACE/Partnership model?

B. Process for Completion and Approval of Deliverables

If, within 60 days of the award of this contract, the contractor and the Department have not reached agreement on a workplan for the assessment, the Department will adopt a workplan specifying additional interim deliverables. Disputes remaining between the contractor and the Department at this point will be resolved through the process described in section X of this contract.

For other interim deliverables and for the final report, which is due on or before September 30, 2003, the process shall be:

- 1) Not later than thirty (30) days after deliverables are submitted, the Department shall accept deliverable or advise Contractor in writing why the deliverable is not accepted.
- 2) Contractor shall correct deliverable in conformity with information provided by the Department and resubmit deliverable within thirty (30) days of written notice of non-acceptance.
- 3) If deliverable is still not acceptable, the process in (2) and (3) will be repeated.

C. Contractor Internal Quality Management Program

The contractor will establish and maintain its own internal quality management program following the basic principles of Continuous Quality Improvement (CQI), which are

presently used in many industries. The CQI principles must be applied to all aspects of the contractor's performance under this contract. A detailed description of the internal quality management program and its associated processes and procedures will be submitted for review to the Department by the contractor(s) within 60 days of the effective date of the contract.

D. Overall Quality of Contractor Performance

The Department reserves the right to determine the level of acceptable quality of any and all contractor deliverables. Reimbursement by the Department will be made for only those deliverables deemed by the Department to be of acceptable quality.

E. Contractor Responsibilities for Independent Assessment (IA) Activities

The contractor is responsible for collaborating with the Department to determine a detailed independent assessment plan that meets federal requirements, and is fully responsible for implementing that plan in accordance with the agreed-upon methodology and elements.

The independent assessor will be required to work closely with Department staff to finalize an independent assessment agreement that clearly defines the scope of the assessment in terms of topics, study design features, plans for analysis and interpretation of study findings and structure of follow-up work plans. The agreement will also need to specify the data that will be used, including format, media, file layout, and time span.

As each analysis is performed, the Contractor will be required to provide the Department with documentation of all data used and analyses performed, at a level of detail sufficient to allow replication. The Department will provide input to the independent assessor regarding the analysis of the data.

Although the Contractor will rely as much as possible on information collected and provided by the Department and the EQRO, the Contractor, as independent assessor, will exercise and apply independent judgment regarding conclusions included in the final report.

F. Availability of Independent Assessor

The contractor shall establish and maintain local office facilities, where employees perform their work, within reasonable walking or driving distance of the Department's central office at 1 West Wilson Street, Madison Wisconsin.

Regardless of office location, the contract manager must be readily accessible and available to the Department during normal business hours. The contractor must be open for business at least 40 hours in a standard business week.

IV. CONTRACTOR QUALIFICATIONS AND PERSONNEL

The following conditions apply to Contractor staffing requirements and qualifications. The Department reserves the right to accept or reject any of the Contractor's employees assigned to this project and to require their replacement at any time.

A. Staff Competencies

The Contractor must ensure the provision of qualified staff in sufficient numbers and with sufficient training and experience to manage the workload and provide services in accordance with the standards as detailed in this contract.

B. Contract Manager

The Contractor shall designate a contract manager to work directly with the Department. The contract manager shall be a full-time employee of the contractor with the authority to revise processes or procedures and assign additional resources as needed to ensure the maximum efficiency and effectiveness of activities and timely completion of contract deliverables. The Department reserves the right to review and approve candidates being considered for employment as the contract manager.

Regardless of local office location, the contract manager shall be readily accessible and available to the Department during normal business hours. The contract manager shall meet with representatives from the Department and other state contractors as necessary at least quarterly, or more frequently as needed, to discuss the status of the contract, the Contractor's performance, necessary revisions, reviews, reports and planning.

C. Project Lead

The Contractor must assign an individual who will act as project lead. The role of the project lead shall be to plan the assessment and be responsible for the ongoing operation and execution of the assessment. One individual may act as the contract manager and as project lead, if he or she is has sufficient authority and responsibility to carry out both roles. The project lead shall be selected with department concurrence. Regardless of office location, the project lead must be readily accessible and available to the Department during normal business hours. The project lead will meet at least monthly with department personnel, or more frequently as needed.

D. Information Systems Staff

The Contractor must have sufficient management information system staff, either in-house or through subcontract, to manage contract requirements including data collection, analysis, and storage. Information system staff must be accessible and available to department staff during regular business hours for technical support and in order to meet the deadlines set by the State. The Contractor must have computer systems and personnel able to analyze data extracted from department sources to meet the specifications of this contract.

E. Clinical Expertise

The Contractor shall have access, as specified in the workplan, to medical and health care experts in specific health and long-term care areas, and to experts in the fields of behavioral interventions, case management, and experts in the supports that can be provided within community-based care models.

F. Staffing Resources

The Contractor shall not reassign key management personnel without prior notification to the Department. Key management personnel must be replaced with personnel of equal skill, training, and experience and not without the written consent of the Department.

G. Employment

The contractor will not engage the services of any person or persons now employed by the State of Wisconsin, including any department, commission or board thereof, to provide services relating to this agreement without the written consent of the employer of such person or persons and of OSF.

H. Dual Employment

Section 16.417, Wis. Stats., prohibits an individual who is a state employee or who is retained as a consultant full-time by a state agency from being retained as a consultant by the same or another agency where the individual receives more than \$12,000 as compensation within the same one-year period as the resulting contract. This prohibition applies only to individuals and does not include corporations or partnerships.

I. Financial Management

The Contractor must have knowledge of financial management practices including financial information systems and claims management, generally accepted accounting principles, budgeting and forecasting principles, and financial auditing principles.

J. Staffing Reports

The Contractor must provide staffing reports to the Department. The staffing report is due to the Department's designated contract administrator within ten days following the end of the report period. The staffing report must include the following items:

1. Current number and type of staff and consultants;
2. Changes in key positions;
3. A list of existing vacancies by position type and location;
4. Hiring actions including anticipated hires since last report; and
5. Provisions to cover existing vacancies to ensure completion of required activities.

Any changes in staffing that will result in a delay of the completion of required activities including reporting must be immediately reported to the Department.

K. Staff Training

The Contractor will assure that its staff possesses sufficient current knowledge of the work that is required under this contract, including:

1. An understanding of Family Care and Wisconsin's long-term care programs;
2. An understanding of the Family Care fiscal reporting and reimbursement, quality monitoring and oversight systems; and
3. Training relevant to relevant federal and state regulations, policies, and procedures regarding the Family Care benefit, Medicaid coverage, and community-based long-term care and services.

L. Orientation and Continuing Professional Development

The Contractor is responsible for all training of new staff, and professional development necessary to support the activities outlined in this contract. The Contractor must also provide any necessary continuing education.

M. Accessible Services

The Contractor must assure that its services are accessible to department staff regardless of ability or disability, language, location, or cultural background. Reasonable accommodations, including barrier-free services, translation and signing services, and other considerations are the responsibility of the Contractor. The Contractor must comply with the requirements of the Americans with Disabilities Act.

V. SUBCONTRACTS

The Contractor may subcontract part of this contract. However, the Contractor retains responsibility for fulfillment of all terms and conditions of this contract when it enters into sub-contractual agreements and will be subject to enforcement of the terms and conditions of this contract.

The Contractor is accountable for, and must oversee, all subcontractor functions and both the Contractor and subcontractor must meet the requirements for independence. No delegation by the Contractor will relieve the Contractor of responsibility for assuring the performance of all aspects of the contract.

The use of subcontractors at any time during the contract period by Contractor for any portion of the scope of work detailed in this contract is subject to the prior written consent of the Department. The Department may request such additional information and written assurances as deemed necessary to ensure that only qualified, competent agencies or groups perform services under the contract, and to ensure that the required scope of work is performed in a professional manner.

VI. AFFIRMATIVE ACTION AND CIVIL RIGHTS COMPLIANCE PLAN

A. Affirmative Action and Civil Rights Compliance

The Contractor or subcontractor to the Contractor with a contract of an expected value of \$25,000 or more and who has a workforce of 25 or more employees must:

- 1) submit an affirmative action plan for approval to the Department within fifteen (15) working days after the contract is awarded. Instructions on preparing the plan and technical assistance regarding this requirement are available from the Department Affirmative Action/Civil Rights Compliance Office; and
- 2) must agree to post in conspicuous places, available for employees, a notice to be provided by the Department that sets forth the provisions of the State of Wisconsin's nondiscrimination law.

Failure to comply with the conditions of this section may result in the Contractor or subcontractors becoming declared an "ineligible" Contractor, termination of the contract, or withholding of payment.

No qualified persons shall be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination in any manner on the basis of race, color, national origin, religion, sex, disability or age. This policy covers eligibility for and access to services delivery, and treatment in all programs and activities. If delivering services to adolescents and their families, the contractor must ensure civil rights compliance consistent with the Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act.

B. Non-Discrimination in Employment

In connection with the performance of work under this contract, the Contractor and any subcontractor agree not to discriminate against any employee or prospective employee for employment because of age, race, religion, color, handicap, sex, marital status, physical condition, arrest or conviction record, developmental disability as defined in s. 51.01 (5), Stats., sexual orientation or national origin. This provision shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available for employees and applicants for employment, notice to be provided by the contracting officer setting forth the provisions of the non-discrimination clause. Except with respect to sexual orientation, the Contractor and any subcontractors agree to take affirmative action to ensure equal employment opportunities.

VII. PROGRAM STRUCTURE

The Contractor and individuals hired by the Contractor shall be required to work with the Center for Delivery Systems Development and other relevant divisions and bureaus within the Department. The Contractor may be asked to participate in department meetings in addition to the Department-Contractor meetings to examine progress and plans for the assessment, and to recommend changes and modifications when advisable. The Contractor will be expected to have teleconference technology to improve meeting attendance when travel distance, adverse conditions, or schedule conflicts are barriers to direct participation.

A. Department Roles and Responsibilities

The Department shall designate a single contract administrator for this contract. The Contractor must report all events, problems, concerns or requests affecting this contract to the contract administrator:

Karen McKim,

Quality and Research Manager,

Center for Delivery Systems Development,

Office of Strategic Finance

1 S. Pinckney St., Suite 340, P.O. Box 1379

Madison, WI 53701-1379

Phone: 608/266-9304

Fax: 608/266-5629

Email: mckimk@dhfs.state.wi.us

The Department shall notify the Contractor of any reassignment of the Contract Administrator.

The Contract Administrator will assure that:

1. The Contractor has access to sufficient information to use in performing activities in the workplan;
2. The information that OSF/CDSO staff provide to the Contractor is obtained through methods consistent with protocols established by the State and CMS; and
3. The results of the independent assessment are made available, upon request, to specified groups and to the general public.

The Department will have an on-going, continuous relationship with the Contractor through each stage of the assessment process and will be part of the inception, design and follow-through of the scope of work. The Department will discuss, and as necessary modify, the Contractor's scope of work in light of operational realities, changed circumstances, and contract resources, in accordance with the revision process described in Section XI B of this contract.

Department staff shall interact with the Contractor as professional peers working toward a common goal of objectively assessing access, quality, and cost-effectiveness of long-term care services and supports in the Family Care program. Communication between the Department and Contractor will be continual in order to ensure clear shared understanding of the assessment objectives, understand and approve analysis techniques used by the Contractor, give feedback on the details of the methodology, and keep abreast of findings.

B. Contractor Roles and Responsibilities

The Contractor shall serve as an independent assessor to the Department, on behalf of the state and federal government, of the access, quality, and cost-effectiveness of long-term care services provided by the Family Care program relative to other systems of long-term care, and of Family Care's effect on the state Medicaid program.

To avoid duplication of work and to maximize efficiency, the Contractor shall collaborate with the Department to determine a detailed assessment plan that meets federal requirements, and is fully responsible for implementing that plan in accordance with the agreed-upon methodology and elements. Also to avoid duplication and to maximize efficiency, the Contractor may perform additional tasks or perform tasks, under separate subcontract to the EQRO. However, the Contractor is fully responsible for exercising independent, objective judgment in the assessment's conclusions.

The Contractor shall designate a single Contract Manager for this contract. The Contractor Manager must report all events, problems, concerns or requests affecting this contract or the deliverables to the Department's Contract Administrator. The Contractor shall notify the Department of any reassignment of the Contract Manager. The designated IRG Contract Manager is:

Amie Goldman, IRG, LLCSM
10 East Doty Street, Suite 210
Madison, WI 53703

Phone: 608/258-3350
Fax: 608/258-3359
Email: agoldman@IRGresources.com

VIII. AUDIT AND REVIEW OF RECORDS

A. Audits

The grantee shall submit an annual program or agency-wide audit to the grantor if the total amount of annual funding provided by the grantor through this or other contracts is \$25,000 or more. The audit shall be in accordance with the requirements of OMB Circular A-133 if the provider meets the criteria of that circular for needing an audit in accordance with that circular. The audit shall also be in accordance with the Provider Agency Audit Guide, 1999 Revision. The audit report is due 180 days from the end of the grantee's fiscal year, and it should be sent to:

Office of Program Review and Audit
Department of Health and Family Services
1 West Wilson Street, Room 951
P.O. Box 7850
Madison, WI 53707-7850

B. Review of Records

Reports and documentation of both programmatic and fiscal activity will be required for the purpose of documenting the satisfactory meeting of contract responsibilities. Specifically the contractor will document each analysis in such a way that the department can reconstruct the analysis. Upon request from the department, the contractor must be able to produce the documentation within five (5) working days of the Department's request. Failure of the Contractor to accept these obligations may result in an imposition of intermediate sanctions, termination of the contract or cancellation of the award.

C. Availability of Records

The contractor shall respond to all inquiries from the Department and make all records and any written and/or electronic case information available to Department within two business days of request. The Department, in its monitoring of the contract(s), reserves the right to inspect or investigate any and all contract and subcontract agency records, procedures, and operations at any time during and after the close of the contract period, upon reasonable notice during the Contractor's normal business hours.

IX. NON-COMPLIANCE, SANCTIONS AND REMEDIAL MEASURES

Department personnel and/or their designated representatives shall perform ongoing contract monitoring to assess adherence to the contract standards and required approaches. Penalties may be applied should the contractor be in non-compliance as determined by the finding by the Department.

A. Non-Compliance

Failure to comply with any part of this contract may be considered cause for revision, suspension or termination of this contract, if such failure is not remedied in accordance with Section IX C, below. Suspension includes withholding part or all of the payments that otherwise would be paid the Contractor under this agreement (except for payments

for services that have already been performed), temporarily having others perform, and receive reimbursements for, the services to be provided under this agreement and any other measure that suspends the Contractor's participation in the contract if the Department reasonably determines it is necessary to protect the interests of the State.

B. Written Notice of Non-compliance

The Department shall provide written notice to the Contractor of all instances of non-compliance with the terms of this contract by itself or its subcontractors, including non-compliance with allowable-cost provisions. Notice shall be given as soon as practicable but in no case later than 30 days after the Department knows, or should have known, about the non-compliance. The written notice shall include information on reason(s) for the effect(s) of the non-compliance. The Department shall provide the Contractor with a plan to correct the non-compliance. At its sole discretion, the Department may take whatever action it deems necessary to protect the interests of the State, including withholding part or all of Contractor's funding, if it reasonably believes that the non-compliance is continuing after the Contractor has had a reasonable opportunity to remedy the non-compliance, or that the non-compliance will reoccur.

C. Correction of Non-Compliance

If the Department determines that non-compliance with the requirements in this contract has occurred, or is occurring, it shall demand immediate correction of continuing non-compliance and, if the Contractor fails to correct such non-compliance within five business days, it may impose whatever reasonable sanctions or remedial measures it deems necessary to protect the interests of the State. Such sanctions and measures may include termination of the agreement, suspension of the agreement, imposing additional reporting requirements and monitoring of subcontractor and any other measures it reasonably deems appropriate and necessary.

D. Withholding Payments

If required statistical data, reports and other required information, other than audits, are not submitted when due, the Department may withhold all payments that otherwise would be paid the Contractor under this contract until such time as the reports and information are submitted.

X. COOPERATION OF PARTIES AND DISPUTE RESOLUTION

A. Agreement to Cooperate

The parties agree to fully cooperate with each other in connection with the performance of their respective obligations and covenants under this contract.

B. Dispute Resolution

The parties shall use their best efforts to cooperatively resolve disputes and problems that arise in connection with this contract. When a dispute arises between the Contractor and the Department that cannot be resolved, the method of resolving the dispute shall be the following process:

1. Disputes Involving Audits

For any audit dispute, review will be through the Department audit resolution process.

2. Disputes Involving All Other Matters

- (i) The Department's contract administrator and the Contractor's contract administrator shall attempt to resolve the dispute.
- (ii) If the dispute cannot be resolved by the Contract Administrators, the Contractor may ask for review by the Director of the Office of Strategic Finance.
- (iii) If the dispute is still not resolved, Contractor may request a final review by the Secretary of the Department.
- (iv) If after the above process is completed, the Contractor is not satisfied with the resolution of the dispute, the Contractor may request a hearing under ch. 227, Wis. Stats. with the Division of Hearings and Appeals, Department of Administration, under rules promulgated at HA 1, Wis. Adm. Code. The proceeding will be conducted as a class 3 contested case.

C. Performance of Contract Terms During Dispute

The existence of a dispute notwithstanding, both parties agree to continue without delay to carry out all their respective responsibilities which are not affected by the dispute and the Contractor further agrees to abide by the interpretation of the Department regarding the matter in dispute while the Contractor seeks further review of that interpretation.

XI. CONTRACT REVISION, RENEWAL, EXTENSION AND TERMINATION

A. Documents Constituting this Agreement

This written contract with mutually agreed-upon addenda shall constitute the entire agreement and no other terms and conditions in any document, acceptance, or acknowledgment shall be effective or binding unless expressly agreed to in writing by the parties to this contract.

B. Agreement Revisions

Revisions of this contract may be made by mutual agreement. The revision will be effective only when the Department and the Contractor attach an addendum or amendment to this contract, which is signed by the authorized representatives of both parties.

The Contractor agrees to renegotiate this agreement or any part thereof in such circumstances as:

- 1. Increased or decreased volume of services;
- 2. Changes required by the State and Federal law or regulations, or court action;
- 3. Reduction in the monies available affecting the substance of this agreement.

Failure to agree to a renegotiated agreement under these circumstances is cause for the Department to terminate this agreement.

The Contractor shall notify the Department whenever it is unable to provide the required quality or quantity of services specified. Upon such notification, the Department shall determine whether such inability will require revision or termination of this contract.

C. Contract Extension

A contract extension means continuation of all or some of the activities in accordance with the terms of this contract. Any extension is at the discretion of the department, for a period of time as determined by the department to complete activities to the satisfaction of the department and in accordance with the terms of this contract. A contract extension shall specify the date or events that will terminate the contract extension and shall provide that in all instances the contract extension shall terminate upon contract renewal. The contract renewal shall assure completion of activities, as required by the Department, that were the subject of this contract or any extension of this contract.

D. Renewal of Contract

The Contractor will contract with the Department for the period beginning September 16, 2002 and extending through September 30, 2003.

The Contractor understands that, for the Independent Assessment of Family Care, the contract with the Department is for this period with an option for a contract renewal for a second evaluation to be conducted at the end of the next waiver period (2004-2006) or for any optional activities awarded in accordance with Section III C of the DHFS Request for Proposal 0305CDSD-LS.

Contract renewals are based on satisfactory performance, federal requirements, and availability of funds.

The Contractor is advised that the funding under this contract may decrease or expand with each renewal period. Should additional state or federal funds become available for expansion and/or enhancement of benefit services, the Department may award additional dollars to this contract.

E. Termination of This Agreement

Either party may terminate this agreement at its sole discretion with ninety (90) days written notice. The State reserves the right to terminate this agreement with less notice if the Department determines a breach or default has occurred or it is necessary to protect the best interests of the State. Upon termination, the Department's liability will be limited to the cost of the services performed as of the date of termination plus expenses incurred with the prior written approval of the Department.

In the event that either the Contractor or the Department terminates this agreement, for any reason whatsoever, the Contractor will refund to the Department within fourteen (14) days of said termination, all payments made hereunder by OSF to the Contractor for work not completed or costs not incurred.

The contract may be terminated if sufficient appropriations or authorizations do not exist or if the Department is prevented for any reason from conducting the Family Care program by the Centers for Medicare and Medicaid Services (CMS), Congress, the State Legislature, or a court of competent jurisdiction. Sending written notice to the Contractor will effect such termination. The Contractor will accept as final the Department's decision as to whether sufficient appropriations and authorizations are available.

XII. INSURANCE

The Contractor performing services for the State of Wisconsin shall:

1. Maintain worker's compensation insurance as required by Wisconsin statutes, for all employees engaged in the work.
2. Maintain commercial liability, bodily injury and property damage insurance against any claim(s) which might occur in carrying out this agreement/contract. Minimum coverage shall be one million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations. Provide motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out this contract. Minimum coverage shall be one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.
3. The state reserves the right to require higher or lower limits where warranted.

XIII. BUSINESS AND FINANCIAL CAPACITY OF CONTRACTOR

A. Implementation Plan

The contractor shall be responsible for working with the Department to devise a research plan for the IA that meets federal requirements, will provide credible and instructive results, and can be carried out in the time available. Within sixty (60) days of the award of the contract, the Department expects to have reached an agreement with the contractor on the workplan, scope and schedule of the independent assessment, including but not limited to:

1. Selection of research topics and statement of research questions; study design features; plans for analysis and interpretation of study findings; and structure of follow-up work plans;
2. Specifications for the data that will be used, including format, media, time span, and whether and to what extent the State will clean up and/or manipulate the data before sending it to the contractor;
3. Provisions ensuring that appropriate confidentiality and disclosure practices are followed with regard to client data; and
4. Specifications for deliverables and deadlines.

B. Compensation and Payment to Contractor

The Department agrees to pay the Contractor for services provided in accordance with the terms and conditions of this contract. The total amount for the contract shall not exceed \$150,000. This amount is contingent upon receipt of sufficient funds by the Department.

The Department shall compensate the Contractor as specified below. Only work that is specified in this contract, including its addendum and attachments, or directed in writing by the Department shall be reimbursed. The Department will make contract payments only to the prime contractor and will consider the contractor to be the sole point of contact with regard to any final contract. In no event shall the contractor claim or the Department be required to reimburse costs in excess of the total contract amount or costs that are inconsistent with applicable state and federal allowable cost policies. Costs in excess of this maximum will not be reimbursed unless there is prior, written amendment to this Contract.

The Department shall compensate the Contractor for work performed under this contract as follows:

1. Each month, expenditure reports based on actual costs shall be sent to the Department's contract administrator for this contract. Eligible costs must be necessary for carrying out the work of the contract, incurred during its duration and determined in accordance with accounting principles.
2. Each quarter, in accordance with section IX D of this contract, the Department shall reimburse the Contractor 25% of the total contract amount upon receipt of an invoice according to the following schedule:

Date	XIV. AMOUNT
December 1, 2002	\$37,500
March 1, 2003	\$37,500
June 1, 2003	\$37,500
Upon Approval of the Final Report of the Work Specified in the Contract	\$37,500

3. The Contractor shall keep proper books of account and supporting documentation to justify as necessary the costs that are charged.
4. Eligible costs must be recorded in the accounts of the contractor no later than the contract completion date.
5. Documentation must be kept for five (5) years after each payment.
6. Explanations and justifications, especially concerning the allocation and apportionment of overheads, must be readily available for inspection by the Department.
7. All costs including overhead are based on actual costs and therefore the Contractor must be able to identify with precision direct and indirect costs.

8. Overhead must be calculated in accordance with normal accounting conventions and acceptable to the Department.
9. The Department reserves the right, upon careful examination, to reduce the total amount of the contract award due to significant under-spending by the Contractor. All such contract reductions will become effective upon thirty (30) written days notice to the Contractor and shall not relieve the Contractor of any programmatic requirements or contract deliverables.

C. Advance Payments

No prepayments or advance payments shall be made.

D. Allowable Costs

The contractor must comply with the *DHFS Allowable Cost Policy Manual*. A copy of the *DHFS Allowable Cost Policy Manual* is available at the Department web site or from the Department's Office of Program Review and Audit (OPRA).

E. Capital Equipment

Funds may only be used to purchase capital equipment with prior written approval from the Department. Capital equipment costs are defined as all costs associated with the acquisition of assets having a value in excess of \$5,000 and a useful life in excess of one year.

F. Salaries

Funds cannot be used to supplant current salaries.

G. Legal Services

Contract funds may be used to provide legal advice to the program for purposes of carrying out its contract obligations. Funds cannot be used to support any legal actions taken against the federal or state government, including contract disputes that might arise with the Department.

H. Minority Business

The State of Wisconsin is committed to the promotion of minority business in the State's purchasing program and has a goal of placing five (5) percent of its total purchasing dollars with certified minority businesses. Authority for this program is found in Wisconsin Statutes ss. 5.107 (2), 16.75 (4), 16.755 and 560.036 (2). The contracting agency is committed to the promotion of minority business in the state's purchasing program.

The contractor is encouraged to purchase services and supplies from minority businesses certified by the Wisconsin Department of Commerce, Bureau of Minority Business Development. A listing of certified minority businesses, as well as the services and commodities they provide, is available from the Department of Administration, Office of Minority Business Program, (608) 267-7806.

I. Proprietary Information

Materials and innovations developed as a result of this contract award cannot be copyrighted or patented without written authorization from the Department. All data, documentation and innovation become the property of the State of Wisconsin and the Department. The contractor agrees that the Department shall have royalty free, non-exclusive and irrevocable rights to reproduce, publish or otherwise use and authorize others to use any materials and innovations developed as a result of this contract award. Any copyright material authorized by the Department or distribution of materials developed through this contract award will acknowledge use of Department funds.

XV. INFORMATION SYSTEMS

The Contractor must provide an information system to support the activities required by the contract.

The Contractor must have the information systems capability to gather, analyze, and report on any of the following items (access to this information will be provided by the Department, or be collected from individual Family Care agencies by the Contractor as necessary):

1. Fee-for-service claims data;
2. CMO, resource center and enrollment consultant data;
3. Eligibility and enrollment data, which includes data on eligibility spans as well as demographic information; and
4. Medicaid contractor data.

The Department will provide the Contractor with direct access to data whenever possible. This includes network dial-up support and system security to access the data. The Contractor is responsible for providing the hardware needed for connection to the Department network and software to process the data. When direct access is not possible, the Department will provide available data to the Contractor electronically, in a mutually compatible format, to meet the needs of the evaluation.

A. Information System Infrastructure

The Contractor and the Department will exchange many electronic files on an ongoing basis. The Contractor must have the technical capacity to develop and maintain an integrated data system which incorporates relevant data elements from Departmental data sources.

1. The Contractor must have the capability to receive electronic files from the Department and its Contractors and produce electronic files in a format usable by the Department.
2. Contractors shall provide software/database compatibility to the products used by the Department.
3. It is the responsibility of the Contractor to maintain confidential data in secure systems.

A systems architecture schematic for the Contractor data system is due to the Department for approval within 30 days following the effective date of the contract. The Department may recommend modifications in the data system consistent with the requirements of the contract. Such recommendations shall be transmitted to the Contractor in writing. The Contractor shall be required to make reasonable modifications to the data system upon request of the Department.

B. Information Management

All data gathered for the independent assessment, and reports and the results of reviews and research based on these data are the exclusive property of the Department. The Contractor must maintain ongoing records of any original information derived from its activities. These data shall be transferred to the Department on an ongoing basis. Any use, access, or release of these data, other than that necessary for the purposes of the contract with the Department, can be made only with the approval of the Department.

It is the Contractor's responsibility to create and maintain appropriate documentation of this information and data used, and analyses performed, for the independent assessment. These data and related documentation shall be maintained in a manner that permits retrieval, reporting, analysis, and replication, on an as-needed basis.

C. Disaster Recovery

The Contractor shall have a disaster recovery plan for restoring application software, current master files and for hardware backup in the event their production systems are disabled. A copy of this plan must be provided to the Department within 30 days following the effective date of the contract. The Department may recommend modifications in the disaster recovery plan consistent with the requirements of the contract. Such recommendations will be transmitted to the Contractor in writing.

D. Security

The Contractor shall have security measures designed to protect both electronic and paper files of a confidential nature (firewalls, locked rooms, etc.). Security measures must include who has access rights to the information and what process is followed to screen the individuals and limit access to these files.

A copy of security and confidentiality procedures, including training plans, must be provided to the Department within 30 days following the effective date of the contract. The Department may recommend modifications in the security and confidentiality plans consistent with the requirements of this contract. Such recommendations will be transmitted to the Contractor in writing.

Misuse of information may be cause for immediate termination of the contract and the organization may face additional legal action by either the Department or by those impacted by the misuse.

E. HIPAA Compliance

The Contractor shall have plans in place to comply with The Health Insurance Portability and Accountability Act of 1996 Public Law 104-191 (HIPAA) Privacy and Security legislation.

XVI. MISCELLANEOUS PROVISIONS

A. Delegations of Authority

No delegations of authority are permitted under this contract without prior approval by the Department.

B. Indemnification

1. Contractor and Department Liability

The Contractor will indemnify, defend if requested and hold harmless the State and all of its officers, agents and employees from all suits, actions, or claims of any character brought for or on account of any injuries or damages received by any persons or property resulting from the operations of the Contractor or any of its Contractors, in prosecuting work under this contract. The Department acknowledges that the State may be required by Wis. Stat. Section 895.46(1) to pay the cost of judgments against its officers, agents or employee, and that an officer, agent or employee of the State may incur liability due to negligence or misconduct.

2. Pass along Federal Penalties

- (i) The Contractor shall indemnify the Department for any federal fiscal sanction taken against the Department or any other state agency which is attributable to action or inaction by the Contractor, its officers, employees, agents or subcontractors that is contrary to the provisions of this Contract.
- (ii) Prior to invoking this provision, the Department agrees to pursue any reasonable defense against the federal fiscal sanction in the available federal administrative forum. The Contractor shall cooperate in that defense to the extent requested by the Department.
- (iii) Upon notice of a threatened federal fiscal sanction, the Department may withhold payments otherwise due to the Contractor to the extent necessary to protect the Department against potential federal fiscal sanction. The Department will consider the Contractor's requests regarding the timing and amount of any withholding adjustments.

C. Independent Capacity of the Contractor

The Department and the Contractor agree that the Contractor and any agents or employees of the Contractor, in the performance of this contract, shall act in an independent capacity, and not as officers or employees of the Department.

D. Omissions

In the event that the Contractor or the Department hereto discovers any material omission in the provisions of this contract which such party believes is essential to the successful performance of this contract, said party may so inform the other party in writing, and the parties hereto shall thereafter promptly negotiate in good faith with respect to such matters for the purpose of making such reasonable adjustments as may be necessary to perform the objectives of this contract, or shall pursue the dispute resolution process available under Article VIII. Of this agreement.

E. Choice of Law

This contract shall be governed by and construed in accordance with the laws of the State of Wisconsin. The Contractor shall be required to bring all legal proceedings against the Department in the State courts in Dane County, Wisconsin.

F. Waiver

No delay or failure by the Contractor or the Department hereto to exercise any right or power accruing upon noncompliance or default by the other party with respect to any of the terms of this contract shall impair such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of a breach of any of the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition, or agreement herein contained.

G. Severability

If any provision of this contract is declared or found to be illegal, unenforceable, invalid or void, then both parties shall be relieved of all obligations arising under such provision; but if such provision does not relate to payments or services to members and if the remainder of this contract shall not be affected by such declaration or finding, then each provision not so affected shall be enforced to the fullest extent permitted by law.

H. Force Majeure

The Contractor and the Department shall be excused from performance hereunder for any period that they are prevented from meeting the terms of this contract as a result of a catastrophic occurrence or natural disaster including but not limited to an act of war, and excluding labor disputes.

I. Headings

The article and section headings used herein are for reference and convenience only and shall not enter into the interpretation hereof.

J. Assignability

Except as allowed under subcontracting, this contract is not assignable by the Contractor either in whole or in part, without the prior written consent of the Department.

K. Right to Publish

The Department agrees to allow the Contractor to write and have such writings published provided the Contractor receives prior written approval from the Department before publishing writings on subjects associated with the work under this contract. The Contractor agrees to protect the privacy of individual members, as required under 42 CFR Part 434.6(a)(8).

In WITNESS THEREOF, The State of Wisconsin, Department of Health and Human Services and IRG, Inc. have executed this contract:

For IRG

For the Department

By: Jennifer Donnelly
IRG, LLCSM

By: Charles Wilhelm,
Office of Strategic Finance,
Department of Health and Family Services

Date: _____

Date: _____